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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

COOPER L. PARTNER,)	Case No. CV13-7063-R (DTB)
Petitioner,)	
vs.)	ORDER SUMMARILY DISMISSING
E. VALENZUELA, Warden,)	PETITION FOR WRIT OF HABEAS
Respondent.)	CORPUS FOR LACK OF SUBJECT
)	MATTER JURISDICTION

Petitioner, a state prisoner currently incarcerated at California Men's Colony in San Luis Obispo, California, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 herein on September 24, 2013.

Based on its initial review of the Petition, as well as information derived from the docket of the United States District Court, Central District of California, it appeared to the Court that the Petition constituted a second or successive petition under 28 U.S.C. § 2244(d), as petitioner previously sought habeas relief from the same 2005 Los Angeles County Superior Court judgment of conviction in a petition filed in this Court, Case No. CV11-3972-R (MLG) ("Prior Action"). On June 7, 2011, Judgment was entered in the Prior Action dismissing that petition with prejudice on the basis that it was untimely. Petitioner filed a notice of appeal from that Judgment on June 22, 2011, and the appeal was dismissed on August 27, 2012.

1 As such, on October 18, 2013, the Court issued an Order to Show Cause
2 (“OSC”) ordering petitioner to show cause in writing (if any he had) as to why the
3 Court should not recommend that this action be dismissed with prejudice on the
4 ground that petitioner failed to secure an order from the Ninth Circuit authorizing the
5 District Court to consider the Petition, prior to his filing of it in this Court.

6 On October 31, 2013, rather than filed a response to the OSC, petitioner filed
7 a “Motion/Petition for: Certificate of Appealability” with the Ninth Circuit. On
8 November 18, 2013, the Court acknowledged petitioner’s filing with the Ninth Circuit
9 and *sua sponte* extended his time within which to file a response to the OSC. On
10 December 2, 2013, rather than filing a response to the Court’s OSC, petitioner filed
11 a document entitled “Request for Leave for an Order(s) Authorizing the District Court
12 to Consider the Petitioner’s: Petition for Writ of Habeas Corpus” wherein it appeared
13 to the Court that petitioner was attempting to secure an order from the Ninth Circuit
14 authorizing the District Court to consider the Petition. On December 18, 2013, the
15 Court acknowledged petitioner’s filing and advised him that the same had to be done
16 prior to his filing of the Petition in this Court pursuant to § 2244(b)(3)(A). On
17 December 19, 2013, petitioner filed a document entitled “Notice of Filing” wherein
18 he advises the Court that the Ninth Circuit has received his application for permission
19 to file a second or successive petition. The Court notes that such application is
20 currently pending with the Ninth Circuit.

21 As petitioner has not yet secured an order from the Ninth Circuit giving him
22 permission to file the Petition, the Petition cannot be considered by this Court as the
23 Court lacks jurisdiction. Therefore, the Court hereby dismisses the Petition as a
24 second and/or successive petition challenging the same judgment of conviction as the
25 Prior Action, within the meaning of 28 U.S.C. § 2244(b), as the Prior Action was
26 denied on the merits. See McNabb v. Yates, 576 F.3d 1028, 1030 (9th Cir. 2009)

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1 (holding that dismissal of a habeas petition as time barred under 28 U.S.C. §
2 2244(d)(1) constitutes a disposition on the merits and renders a subsequent petition
3 second or successive for purposes of 28 U.S.C. § 2244(b)).

4 For the foregoing reasons, IT IS ORDERED that this action be summarily
5 dismissed, pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the
6 United States District Courts.

7 LET JUDGMENT BE ENTERED ACCORDINGLY.

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9 DATED: _January 27, 2014_



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12 MANUEL L. REAL
UNITED STATES DISTRICT JUDGE

13 Presented by:



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16 David T. Bristow
United States Magistrate Judge
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